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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/140,049	08/26/98	COTE	A COTE/971/US

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MIRICK, O CONNELL, DEMALLIE & LOUGEE, LL
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WORCESTER MA 01608-1477

EXAMINER

GLESSNER, B

ART UNIT	PAPER NUMBER
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3635

DATE MAILED:

8
11/02/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/140,049

Applicant(s)
Armand Cote

Examiner
Brian Glessner

Group Art Unit
3635



☒ Responsive to communication(s) filed on Oct 3, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 4-8 and 11-14 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 4-8 and 11-14 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not properly identify the city and state or foreign country of residence of each inventor.

It does not properly identify the citizenship of each inventor.

It does not properly claim priority on the provisional application under 35 U.S.C. Section 119(e). The examiner is enclosing a copy of a proper declaration. The applicant may use this copy to submit with the next response.

Claim Rejections - 35 USC § 112

- B.G.
2. Claims ^{4-8 And 11-14} ~~4-14~~ are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 13, the scope of the claims is indefinite because the applicant is claiming the lower member of the utility pole embedded in the ground. It is improper to

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positively claim the ground since it is not actually part of the invention. Therefore, the claim should read as follows: "a solid, plastic lower member adapted to be embedded in the ground". Further, the applicant also claims that "the hollow plastic tube fractures upon a relatively lower impact from and automobile". This is also improper. The claim should read as follows: "a hollow plastic tube which is adapted to fracture upon a relatively low impact from an automobile." Further, the lower member connector should be "adapted to" protrude from the ground. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. Claims 4-8, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (5,081,804) in view of Papin (5,775,035).

In regard to claim 13, Andersson et al. discloses a utility pole comprising:

a lower member 1 adapted to be embedded in the ground and having a connector at its top adapted to protrude from the ground; an intermediate, generally cylindrical member 20 interfitted into said lower member connector and protruding up, and having a connector at its top; and a top member 22 interfitted into said intermediate member connector, and having means for carrying utility wires; wherein said intermediate member is a hollow tube. Andersson et al. does not disclose that said top and lower members are solid plastic, or that said intermediate tube is plastic. Papin teaches that it is known to construct utility poles of plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct

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Andersson et al.'s pole of plastic, because plastic does not need to be treated before it is exposed to the elements. Also, plastic is easily molded and lower in cost compared to metal. Further, plastic can be produced to have structural characteristics comparable to that of metals.

In regard to the top and lower member being solid, Andersson et al. discloses that the lower member substantially solid. Andersson et al. discloses that said first pole portion is filled with concrete. Therefore, it is substantially solid. Andersson et al. does not disclose that said third pole portion is substantially solid. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Andersson et al.'s third pole portion substantially solid, because the third pole portion is supporting the weight of the power lines and additional strength may be needed.

In regard to claim 4, Andersson et al. in view of Papin disclose the basic claimed invention, wherein said second portion is generally annular in cross-section.

In regard to claim 5, Andersson et al. in view of Papin disclose the basic claimed invention, in which said lower member includes at its upper end one part of a two-part male/female connector element.

In regard to claim 6, Andersson et al. in view of Papin disclose the basic claimed invention, in which said intermediate member includes at its lower end the second part of said male/female connector element.

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In regard to claim 7, Andersson et al. in view of Papin disclose the basic claimed invention, in which said intermediate member further includes at its upper end one part of another two-part male/female connector element.

In regard to claim 8, Andersson et al. in view of Papin disclose the basic claimed invention, wherein said top member includes the second part of said another two-part male/female connector element.

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andersson et al. (5,081,804) in view of Papin (5,775,035) and further in view of Baumeister (3,378,967).

In regard to claim 12, Andersson et al. in view of Papin disclose the basic claimed invention, further including a pointed member. However, Andersson et al. does not disclose that said pointed member is a separate member that connects to the lower member. Baumeister teaches that it is known to make the pointed portion and the pole portion separate and then connect them together. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Andersson et al.'s pointed member and lower member separate, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andersson et al. (5,081,804) in view of Papin (5,775,035) as applied to claim 13 above and further in view of Svensson (4,738,058).

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In regard to claim 14, Andersson et al. in view of Papin disclose the basic claimed invention, except for disclosing that said intermediate member is internally fluted along its length to weaken it so that it fractures more easily. Svensson teaches that it is known to provide internal flutes in posts to weaken them. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate said flutes into Andersson et al. in view of Papin's invention, because the flutes will allow the pole to fracture easier during an impact. Therefore, the object impacting the pole will not be damaged as severely and if it is an automobile that impacts the pole, the occupants will not be injured.

Response to Arguments

6. Applicant's arguments filed 10/3/2000 have been fully considered but they are not persuasive.

In regard to the Oath/Declaration, the examiner would like to request that the applicant use the Oath/Declaration provided by the examiner, which is attached hereto.

In response to the applicant's argument that the references do not disclose the applicant's claimed invention, the examiner respectfully disagrees. The examiner contends that the above rejection, comprised of the combination of references, meet all of the limitations of applicant's claims. The applicant does not provide any reasons as to why the above references do not specifically meet the limitations of applicant's claims. He merely states that they do not show the claimed invention. Therefore, since the examiner disagrees, the claims stand rejected.

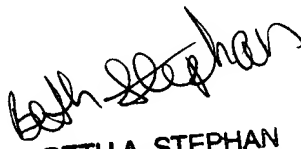
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Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Glessner whose telephone number is (703) 305-0031.


BETH A. STEPHAN
PRIMARY EXAMINER

B.G.

October 26, 2000